

## **DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

### **GENERAL CRITERIA FOR REVIEW OF SUBDIVISION EXEMPTION APPLICATIONS**

The governing body and its agents, when determining whether an exemption described in Sections 4-3, 4-4, or 4-5 of the Ravalli County Subdivision Regulations is claimed for the purpose of evading the Montana Subdivision and Platting Act, shall consider all of the surrounding circumstances, including the following:

- a. The nature of the claimant's business,
- b. The prior history of the particular tract in question,
- c. The proposed configuration of the tracts if the proposed exempt transaction is completed,
- d. Any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review, and
- e. The rebuttable presumptions for specific exemptions as outlined in the following sections of this chapter. A rebuttable presumption refers to identifiable conditions, that, when they exist require further consideration to determine whether or not an exemption request is an evasion of the MSPA.

### **EXEMPTION REQUESTS THAT HAVE REBUTTABLE PRESUMPTIONS TO BE ADDRESSED:**

A division of land is created to provide **security for mortgages**, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- It will create more than one new building site;
- The financing is not for construction or improvements on the exempted parcel, or for re-financing;
- The person named in the "statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed" is anyone other than the borrower of funds for construction;
- Title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
- There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- It appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or
- The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

**Relocation of Common Boundary Outside a Platted Subdivision.** The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- The reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation;
- The proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres;
- The proposed relocation creates a new buildable tract from one that did not have a practical building site;

- The proposed relocation significantly changes the area between the existing and proposed parcel sizes; or
- The proposed relocation would cause significant impacts to the criteria listed in Section 3-2-8 that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent subdivision application.

**A Gift or Sale to a Member of the Immediate Family.** The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space, or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

**Restriction on Subsequent Transfer.** The transfer or potential sale of the gifted tract created by the family gift or sale exemption within three years of creation of the tract will result in the presumption that the use of the exemption was adopted for the purposes of evading the MSPA and the recordation of the instrument of conveyance of a parcel created by family gift or sale within three years of creation may be subject to refusal of the Clerk and Recorder.

**Divisions of Land Proposed for Agricultural Use Only. (Agricultural Covenant)** The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the BCC and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
- The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- The parcel must meet the criteria for an agricultural designation under Section 15-7-202, MCA.

**Relocation of Common Boundaries Involving Platted Subdivisions.** The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

- If additional lots are created, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- The proposed relocation creates a new buildable tract from one that did not have a practical building site.
- The proposed relocation significantly changes the area between the existing and proposed parcel sizes.
- The proposed relocation would cause significant impacts to the criteria listed in Section 3-2-8 that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent subdivision application.